SUPREME COURT, U. S.
No. 73-392
OCT 31 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

JEROME DALY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 20-24) is not yet reported. The district court did not file an opinion.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 1973, and a petition for rehearing was denied on August 9, 1973. The petition for a writ of certiorari was filed on August 31, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's filing of an Individual Income Tax Return Form 1040 containing only his name,

address, occupation, signature, and date, together with the claim that further disclosures would violate his Fifth Amendment privilege against self-incrimination, bars his prosecution for wilful failure to file a tax return.

STATEMENT

Following a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted on two counts of wilfully failing to file tax returns, in violation of Section 7203 of the Internal Revenue Code of 1954. He was committed to the custody of the Attorney General under the provisions of 18 U.S.C. 4208(b) for a study of his mental condition, as provided in Section 4208(c). Execution of the sentence was stayed pending appeal. The court of appeals affirmed (Pet. App. 20-24).

The evidence established that during the years 1967 and 1968 petitioner was a practicing lawyer in Savage, Minnesota (Tr. 54).[1] By stipulation, it was agreed that he received legal fees of $6,346.75 and $10,482.78 for the years 1967 and 1968, respectively (Tr. 61-63, 189). In addition, there was evidence that he received an additional $12,000 in fees in 1968 (Tr. 133-137, 190).

Petitioner timely filed Forms 1040 (United States Individual Income Tax Return) for 1967 and 1968, each of which contained only his name, address, signature, date, occupation, and an attached "exhibit" upon which he objected to the tax laws as being unconstitutional and asserted his claim that he could

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[1] "Tr." references are to the transcript of trial. "Gov. Ex." references are to government exhibits admitted in evidence.

not supply any of the requested information without waiving his constitutional right against self-incrimination (Tr. 180-183; Gov. Exs. 9-13, 17-20, 24-28). On December 19, 1969, the Internal Revenue Service returned these documents to petitioner with a letter stating that they were not returns because they did not include information relative to income and expenditures (Tr. .75; Gov. Ex. 15). Petitioner thereafter filed "amended returns" which again failed to disclose any information relative to income, expenditures, credits or tax. (Tr. 76-77, 155, 182; Gov. Exs. 17-20, 24-28.) Typed on all the "returns" was the statement, "I further object to the form of the return upon the grounds it may tend to supply information which may tend to lead to information which might tend to * * * incriminate me" (Tr. 182; Gov. Exs. 9-13, 17-20, 24-28).

Although petitioner did not testify, he did explain his defense to the jury in his closing argument, saying: "[A]ll I have said is, if you want information from me, I want immunity from a state or federal prosecution because I think that the filling out of these forms might tend to incriminate me under a state or federal law * * *." (Tr. 255.)

The court of appeals affirmed the conviction, holding the the filing of the purported returns did not constitute the filing of returns within the meaning of the Internal Revenue Code and that petitioner's blanket refusal to answer any questions on the returns did not present a valid Fifth Amendment claim (Pet. App. 20-24).

ARGUMENT

Citing this Court's decision in *United States* v. *Sullivan,* 274 U.S. 259, petitioner argues (Pet. 10-11)

that the filing of "tax returns" containing only his name, address, signature, date and occupation, together with a statement that the submission of any further information would violate his Fifth Amendment rights, is sufficient to invoke the privilege. Apart from this general statement, however, petitioner has at no time indicated which questions on the Form 1040 are objectionable, nor has he made any showing of how the answers to these questions might incriminate him. "In order to invoke the privilege, it is necessary to show that the compelled disclosures will themselves confront the claimant with 'substantial hazards of self-incrimination.'" *California* v. *Byers,* 402 U.S. 424, 429.

In *Sullivan,* the Court held that the Fifth Amendment does not protect the recipient of illegal income from prosecution for wilful refusal to file an income tax return. If any disclosures required by the return are privileged, the Court stated, the privilege should be claimed on the return (274 U.S. at 264). By claiming compliance with *Sullivan,* petitioner in effect acknowleges that he is required to file a tax return but contends that the return does not have to contain any information which could possibly incriminate him. But as the court subsequently explained in *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70, 79, in language particularly appropriate here, the *Sullivan* decision rested on the view that "the questions in the income tax form were neutral on their face and directed [to] the public at large" and that "a self-incrimination claim against every question on the tax return, or based on the mere submission of the return, would be virtually frivolous * * *."

Plainly, the filing of what is essential a blank return without any information as to income and expenses

does not comply with the return filing requirement. *United States* v. *Porth,* 426 F. 2d 519, 523 (C.A. 10), certiorari denied, 400 U.S. 824. Thus, petitioner's assertion represents nothing more than a claim of a blanket privilege against the filing of an income tax return, a contention which has been uniformly rejected since *Sullivan.* See, *e.g., California* v. *Byers, supra,* 402 U.S. at 434; *United States* v. *Egan,* 459 F. 2d 997 (C.A. 2), certiorari denied, 409 U.S. 875; *United States* v. *MacLeod,* 436 F. 2d 947, 951 (C.A. 8), certiorari denied, 402 U.S. 907; *United States* v. *Porth, supra;* and *Heligman* v. *United States,* 407 F. 2d 448 (C.A. 8), certiorari denied, 395 U.S. 977.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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